

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 401

Representative Reineke

**Cosponsors: Representatives Riedel, Stein, Seitz, Hambley, Jones, Smith, T.,
Cross, Lipps, Lang, Swearingen, Perales, Richardson**

A BILL

To amend sections 4906.10, 4906.13, 4906.20, and 1
4906.201; to amend, for the purpose of adopting 2
a new section number as indicated in 3
parentheses, section 519.214 (519.215); and to 4
enact new section 519.214 and sections 4906.101 5
and 4906.203 of the Revised Code to require 6
inclusion of safety specifications in wind farm 7
certificate applications, to modify wind turbine 8
setbacks, and to permit a township referendum 9
vote on certain wind farm certificates. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4906.10, 4906.13, 4906.20, and 11
4906.201 be amended; section 519.214 (519.215) be amended for 12
the purpose of adopting a new section number as indicated in 13
parentheses; and new section 519.214 and sections 4906.101 and 14
4906.203 of the Revised Code be enacted to read as follows: 15

Sec. 519.214. (A) (1) If the power siting board issues a 16
certificate to, or approves an amendment described in division 17
(A) (2) of this section to an existing certificate for, an 18

economically significant wind farm or a large wind farm as those 19
terms are defined in section 4906.13 of the Revised Code, to be 20
located in whole or in part in the unincorporated area of a 21
township, the certificate or amendment shall become effective on 22
the ninetieth day after the day it is issued, unless, not later 23
than that day, a referendum petition is filed with the board of 24
elections to require the certificate or amendment to be 25
submitted to the electors of the unincorporated area of the 26
township for approval or rejection. 27

(2) Amendments to an existing certificate that do the 28
following are subject to division (A) (1) of this section: 29

(a) Add more wind turbines; 30

(b) Increase the height of a wind turbine as measured from 31
the wind turbine tower's base to the tip of the blade at its 32
highest point; 33

(c) Increase the diameter of a wind turbine tower's base; 34

(d) Change the location of any wind turbine. 35

(B) (1) A referendum petition submitted under division (A) 36
of this section shall be signed by a number of qualified 37
electors residing in the unincorporated area of the township 38
equal to not less than eight per cent of the total votes cast 39
for all candidates for governor in the unincorporated area of 40
the township at the most recent general election at which a 41
governor was elected. 42

(2) Each part petition shall contain a brief description 43
of the wind farm the certificate or amendment authorizes that is 44
sufficient to identify the certificate. The description shall 45
include the certificate number and identification of each 46
unincorporated township and county in which a wind turbine would 47

be placed under the certificate or amendment. In addition to the 48
requirements of this section, the requirements of section 49
3501.38 of the Revised Code shall apply to the petition. 50

(3) The form of the petition shall be substantially as 51
follows: 52

"PETITION FOR REFERENDUM OF WIND FARM CERTIFICATE OR 53
AMENDMENT 54

A proposal to approve or reject the wind farm certificate 55
or amendment issued for (description of wind farm) in 56
the unincorporated area of Township, 57
County, Ohio, adopted on (date) by the Board of 58
Township Trustees of Township, County, 59
Ohio. 60

We, the undersigned, being electors residing in the 61
unincorporated area of Township, equal to not less 62
than eight per cent of the total vote cast for all candidates 63
for governor in the area at the preceding general election at 64
which a governor was elected, request the Board of Elections to 65
submit this proposal to the electors of the unincorporated area 66
of Township for approval or rejection at a special 67
election to be held on the day of the primary or general 68
election to be held on (date), pursuant to section 69
519.214 of the Revised Code. 70

..... Signature 71

..... Residence address 72

..... Date of signing 73

STATEMENT OF CIRCULATOR 74

I, (name of circulator), declare under penalty 75

of election falsification that I reside at the address appearing 76
below my signature; that I am the circulator of the foregoing 77
part petition containing (number) signatures; that I 78
have witnessed the affixing of every signature; that all signers 79
were to the best of my knowledge and belief qualified to sign; 80
and that every signature is to the best of my knowledge and 81
belief the signature of the person whose signature it purports 82
to be or of an attorney in fact acting pursuant to section 83
3501.382 of the Revised Code. 84

..... (Signature of circulator) 85

..... (Circulator's residence address) 86

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A 87
FELONY OF THE FIFTH DEGREE." 88

(C) Upon receiving the referendum petition, the board of 89
elections shall notify the board of township trustees that the 90
petition has been filed. If the board of elections determines 91
that the referendum petition is sufficient and valid, the board 92
shall notify the board of township trustees of that fact and 93
shall submit the certificate or amendment to the electors of the 94
unincorporated area of the township for approval or rejection at 95
a special election held on the day of the next primary or 96
general election occurring at least ninety days after the board 97
receives the petition. 98

(D) The certificate or amendment shall not take effect 99
unless it is approved by a majority of the electors voting on 100
it. If the certificate or amendment is approved by a majority of 101
the electors voting on it, the certificate shall take immediate 102
effect, subject to modification under section 4906.101 or 103
4906.203 of the Revised Code, as applicable. 104

Sec. ~~519.214~~ 519.215. Township zoning commissions, boards 105
of township trustees, and township boards of zoning appeals 106
shall comply with section 5502.031 of the Revised Code. 107

Sec. 4906.10. (A) The power siting board shall render a 108
decision upon the record either granting or denying the 109
application as filed, or granting it upon such terms, 110
conditions, or modifications of the construction, operation, or 111
maintenance of the major utility facility as the board considers 112
appropriate. The certificate shall be subject to section 113
4906.101 of the Revised Code and conditioned upon the facility 114
being in compliance with standards and rules adopted under 115
section 4561.32 and Chapters 3704., 3734., and 6111. of the 116
Revised Code. An applicant may withdraw an application if the 117
board grants a certificate on terms, conditions, or 118
modifications other than those proposed by the applicant in the 119
application. 120

The board shall not grant a certificate for the 121
construction, operation, and maintenance of a major utility 122
facility, either as proposed or as modified by the board, unless 123
it finds and determines all of the following: 124

(1) The basis of the need for the facility if the facility 125
is an electric transmission line or gas pipeline; 126

(2) The nature of the probable environmental impact; 127

(3) That the facility represents the minimum adverse 128
environmental impact, considering the state of available 129
technology and the nature and economics of the various 130
alternatives, and other pertinent considerations; 131

(4) In the case of an electric transmission line or 132
generating facility, that the facility is consistent with 133

regional plans for expansion of the electric power grid of the 134
electric systems serving this state and interconnected utility 135
systems and that the facility will serve the interests of 136
electric system economy and reliability; 137

(5) That the facility will comply with Chapters 3704., 138
3734., and 6111. of the Revised Code and all rules and standards 139
adopted under those chapters and under section 4561.32 of the 140
Revised Code. In determining whether the facility will comply 141
with all rules and standards adopted under section 4561.32 of 142
the Revised Code, the board shall consult with the office of 143
aviation of the division of multi-modal planning and programs of 144
the department of transportation under section 4561.341 of the 145
Revised Code. 146

(6) That the facility will serve the public interest, 147
convenience, and necessity; 148

(7) In addition to the provisions contained in divisions 149
(A) (1) to (6) of this section and rules adopted under those 150
divisions, what its impact will be on the viability as 151
agricultural land of any land in an existing agricultural 152
district established under Chapter 929. of the Revised Code that 153
is located within the site and alternative site of the proposed 154
major utility facility. Rules adopted to evaluate impact under 155
division (A) (7) of this section shall not require the 156
compilation, creation, submission, or production of any 157
information, document, or other data pertaining to land not 158
located within the site and alternative site. 159

(8) That the facility incorporates maximum feasible water 160
conservation practices as determined by the board, considering 161
available technology and the nature and economics of the various 162
alternatives. 163

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 4906.101. (A) (1) If the power siting board issues a certificate to, or approves an amendment described in division (A) (2) of this section to an existing certificate for, a large wind farm as defined in section 4906.13 of the Revised Code and the large wind farm is to be located in the unincorporated area of a township, the certificate or amendment shall be conditioned upon the right of referendum as provided in section 519.214 of the Revised Code.

(2) Amendments to an existing certificate that do the following are subject to division (A) (1) of this section:

(a) Add more wind turbines;

(b) Increase the height of a wind turbine as measured from the wind turbine tower's base to the tip of the blade at its highest point;

(c) Increase the diameter of a wind turbine tower's base;

(d) Change the location of any wind turbine.

(B) If the certificate or amendment is rejected in a referendum under section 519.214 of the Revised Code, one of the following applies:

(1) If the large wind farm is to be located in the

unincorporated area of a single township, the certificate or 192
amendment shall be invalid; 193

(2) If the large wind farm is to be located in the 194
unincorporated area of more than one township, one of the 195
following applies: 196

(a) If less than all of the townships with electors voting 197
on the referendum reject the certificate or amendment, the power 198
siting board shall modify the certificate or amendment to 199
exclude the area of each township whose electors rejected the 200
certificate or amendment and shall not make any other changes to 201
the certificate or amendment. 202

(b) If all of the townships with electors voting on the 203
referendum reject the certificate or amendment, the certificate 204
is invalid. 205

(C) A modification under division (B) (2) (a) of this 206
section shall not be considered an amendment to the certificate. 207

(D) If a certificate modification under division (B) (2) (a) 208
of this section would cause the wind farm to no longer need 209
certification from the power siting board, the certificate is 210
invalid. 211

Sec. 4906.13. (A) As used in this section and sections 212
4906.101, 4906.20, 4906.203, and 4906.98 of the Revised Code, 213
"economically: 214

"Economically significant wind farm" means wind turbines 215
and associated facilities with a single interconnection to the 216
electrical grid and designed for, or capable of, operation at an 217
aggregate capacity of five or more megawatts but less than fifty 218
megawatts. The term excludes any such wind farm in operation on 219
June 24, 2008. The term also excludes one or more wind turbines 220

and associated facilities that are primarily dedicated to 221
providing electricity to a single customer at a single location 222
and that are designed for, or capable of, operation at an 223
aggregate capacity of less than twenty megawatts, as measured at 224
the customer's point of interconnection to the electrical grid. 225

"Large wind farm" means an electric generating plant that 226
consists of wind turbines and associated facilities with a 227
single interconnection to the electrical grid that is a major 228
utility facility as defined in section 4906.01 of the Revised 229
Code. 230

(B) No public agency or political subdivision of this 231
state may require any approval, consent, permit, certificate, or 232
other condition for the construction or operation of a major 233
utility facility or economically significant wind farm 234
authorized by a certificate issued pursuant to Chapter 4906. of 235
the Revised Code. Nothing herein shall prevent the application 236
of state laws for the protection of employees engaged in the 237
construction of such facility or wind farm nor of municipal 238
regulations that do not pertain to the location or design of, or 239
pollution control and abatement standards for, a major utility 240
facility or economically significant wind farm for which a 241
certificate has been granted under this chapter. 242

Sec. 4906.20. (A) No Subject to section 4906.203 of the 243
Revised Code, no person shall commence to construct an 244
economically significant wind farm in this state without first 245
having obtained a certificate from the power siting board. An 246
economically significant wind farm with respect to which such a 247
certificate is required shall be constructed, operated, and 248
maintained in conformity with that certificate and any terms, 249
conditions, and modifications it contains. A certificate shall 250

be issued only pursuant to this section. The certificate may be 251
transferred, subject to the approval of the board, to a person 252
that agrees to comply with those terms, conditions, and 253
modifications. 254

(B) The board shall adopt rules governing the 255
certificating of economically significant wind farms under this 256
section. Initial rules shall be adopted within one hundred 257
twenty days after June 24, 2008. 258

(1) (a) The rules shall provide for an application process 259
for certificating economically significant wind farms that is 260
identical to the extent practicable to the process applicable to 261
certificating major utility facilities under sections 4906.06, 262
4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the 263
Revised Code and shall prescribe a reasonable schedule of 264
application filing fees structured in the manner of the schedule 265
of filing fees required for major utility facilities. 266

(b) The rules shall require a certification application, 267
or an amendment to an existing certificate, to include a copy of 268
the wind turbine manufacturer's safety specifications, including 269
the manufacturer's recommended setback distances for the wind 270
turbines described in the application. 271

(2) Additionally, the rules shall prescribe reasonable 272
regulations regarding any wind turbines and associated 273
facilities of an economically significant wind farm, including, 274
but not limited to, their location, erection, construction, 275
reconstruction, change, alteration, maintenance, removal, use, 276
or enlargement and including erosion control, aesthetics, 277
recreational land use, wildlife protection, interconnection with 278
power lines and with regional transmission organizations, 279
independent transmission system operators, or similar 280

organizations, ice throw, sound and noise levels, blade shear, 281
shadow flicker, decommissioning, and necessary cooperation for 282
site visits and enforcement investigations. 283

(a) The rules also shall prescribe a minimum setback for a 284
wind turbine of an economically significant wind farm. That 285
minimum shall be equal one of the following, whichever is 286
greater: 287

(i) Equal to a horizontal distance, from the turbine's 288
base to the property line of the wind farm property, equal to 289
one and one-tenth times the total height of the turbine 290
structure as measured from its base to the tip of its highest 291
blade and be at least one thousand one hundred twenty-five feet 292
in horizontal distance from the tip of the turbine's nearest 293
blade at ninety degrees to the property line of the nearest 294
adjacent property at the time of the certification application; 295

(ii) One of the following: 296

(I) The setback distance recommended in the wind turbine 297
manufacturer's safety specifications for the wind turbines 298
described in the certification application, if the distance is 299
measured from the property line of the nearest adjacent 300
property; 301

(II) If the setback distance recommended in division (B) 302
(2) (a) (ii) (I) of this section is not measured from the property 303
line of the nearest adjacent property, that distance as measured 304
from the property line of the nearest adjacent property at the 305
time of the certification application. 306

(b) (i) For any existing certificates and amendments 307
thereto, and existing certification applications that have been 308
found by the chairperson to be in compliance with division (A) 309

of section 4906.06 of the Revised Code before the effective date 310
of the amendment of this section by H.B. 59 of the 130th general 311
assembly, September 29, 2013, the distance shall be seven 312
hundred fifty feet instead of one thousand one hundred twenty- 313
five feet. 314

(ii) Any amendment made to an existing certificate after 315
the effective date of the amendment of this section by H.B. 483 316
of the 130th general assembly, September 15, 2014, shall be 317
subject to the setback provision of this section as amended by 318
that act. The amendments to this section by that act shall not 319
be construed to limit or abridge any rights or remedies in 320
equity or under the common law. 321

(c) The setback shall apply in all cases except those in 322
which all owners of property adjacent to the wind farm property 323
waive application of the setback to that property pursuant to a 324
procedure the board shall establish by rule and except in which, 325
in a particular case, the board determines that a setback 326
greater than the minimum is necessary. 327

Sec. 4906.201. (A) ~~An electric generating plant that~~ 328
~~consists of wind turbines and associated facilities with a~~ 329
~~single interconnection to the electrical grid that is designed~~ 330
~~for, or capable of, operation at an aggregate capacity of fifty~~ 331
~~megawatts or more~~ A large wind farm is subject to the minimum 332
setback requirements established in rules adopted by the power 333
siting board under division (B) (2) of section 4906.20 of the 334
Revised Code. 335

(B) (1) For any existing certificates and amendments 336
thereto, and existing certification applications that have been 337
found by the chairperson to be in compliance with division (A) 338
of section 4906.06 of the Revised Code before the effective date 339

of the amendment of this section by H.B. 59 of the 130th general 340
assembly, September 29, 2013, the distance shall be seven 341
hundred fifty feet instead of one thousand one hundred twenty- 342
five feet. 343

(2) Any amendment made to an existing certificate after 344
the effective date of the amendment of this section by H.B. 483 345
of the 130th general assembly, September 15, 2014, shall be 346
subject to the setback provision of this section as amended by 347
that act. The amendments to this section by that act shall not 348
be construed to limit or abridge any rights or remedies in 349
equity or under the common law. 350

Sec. 4906.203. (A) (1) If the power siting board issues a 351
certificate under section 4906.20 of the Revised Code to, or 352
approves an amendment to an existing certificate for, an 353
economically significant wind farm to be located in the 354
unincorporated area of a township, the certificate or amendment 355
shall be conditioned upon the right of referendum as provided in 356
section 519.214 of the Revised Code. 357

(2) Amendments to an existing certificate that do the 358
following are subject to division (A) (1) of this section: 359

(a) Add more wind turbines; 360

(b) Increase the height of a wind turbine as measured from 361
the wind turbine tower's base to the tip of the blade at its 362
highest point; 363

(c) Increase the diameter of a wind turbine tower's base; 364

(d) Change the location of any wind turbine. 365

(B) If the certificate or amendment is rejected in a 366
referendum under section 519.214 of the Revised Code, one of the 367

following applies: 368

(1) If the economically significant wind farm is to be 369
located in the unincorporated area of a single township, the 370
certificate or amendment is invalid. 371

(2) If the economically significant wind farm is to be 372
located in the unincorporated area of more than one township, 373
one of the following applies: 374

(a) If less than all of the townships with electors voting 375
on the referendum reject the certificate or amendment, the power 376
siting board shall modify the certificate or amendment to 377
exclude the area of each township whose electors rejected the 378
certificate or amendment and shall not make any other changes to 379
the certificate or amendment. 380

(b) If all of the townships with electors voting on the 381
referendum reject the certificate or amendment, the certificate 382
is invalid. 383

(C) A modification under division (B) (2) (a) of this 384
section shall not be considered an amendment to the certificate. 385

(D) If a certificate modification under division (B) (2) (a) 386
of this section would cause the wind farm to no longer need 387
certification from the power siting board, the certificate is 388
invalid. 389

Section 2. That existing sections 519.214, 4906.10, 390
4906.13, 4906.20, and 4906.201 of the Revised Code are hereby 391
repealed. 392